

REMARKS

Claims 1-36 were pending in the application. Claim 27 has been amended and claims 1-26 have been cancelled, without prejudice, as being directed to a non-elected invention. Accordingly, upon entry of this amendment, claims 27-36 will be pending.

Support for the amendment to claim 27 may be found throughout the specification, including the originally filed claims.

No new matter has been added. Any amendments to and/or cancellation of the claims was done solely to more particularly point out and distinctly claim the subject matter of Applicants' invention in order to expedite the prosecution of the application. Applicants reserve the right to pursue the claims as originally filed in this or a separate application(s).

Election/Restriction

The Examiner has required restriction to one of the following inventions under 35 U.S.C. § 121:

Group I: Claims 1-11, drawn to an isolated nucleic acid and kit, classified in class 536, subclass 23.1.

Group II: Claims 12-26, drawn to a method for determining whether asthma patient is responsive to treatment, classified in class 514, subclass 44.

Group III: Claims 27-36, drawn to a method for determining allelic variant, classified in class 435, subclass 6.

Applicants elect **Group III (claims 27-36)**, without traverse. Applicants reserve the right to traverse the above restriction with respect to non-elected Groups I and II in this or subsequent applications.

Sequence Election

Applicants are further requested to elect a single sequence. The Examiner is of the opinion that “the Groups I-III reads on patentably distinct haplotypes selected from SEQ ID NOS:4-6 and 7-8...[i]f the group II or III is elected, Applicant must elect one (1) haplotypes selected from SEQ ID NO:4-6 and one (1) haplotype selected from SEQ ID NOS:7-8.” The Examiner further states that “Applicant is advised that examination will be restricted to only the elected 3 SEQ ID NOS: for Group I or the elected 2 SEQ ID NOS: for Groups II and III along with the corresponding claims and should not be construed as a species election.”

It is Applicants' understanding that the Examiner has required that if Group III is elected, Applicants must elect one sequence from SEQ ID NOS:4-6 and one sequence from SEQ ID NOS:7-8. Applicants respectfully point out that Group III, which consists of claims 27-36, does not include claims directed to SEQ ID NOS:7-8 or methods for identifying nucleic acid molecules comprising SEQ

ID NOs:7-8. Accordingly, Applicants respectfully submit that an election of one of SEQ ID NOs:7 or 8 is not necessary.

Applicants hereby elect SEQ ID NO:5, *with traverse*. Applicants traverse the Sequence Election requirement for the following reasons. It is the Applicants' position that, with respect to the claimed methods for identifying allelic variants, a species election for searching purposes would be more appropriate in this situation.

Applicants respectfully submit that a sufficient search and examination with respect to the claimed nucleotide sequences can be made without serious burden on the Examiner. As the M.P.E.P. states:

[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. M.P.E.P. § 803.

Applicants respectfully submit that the searches with regard to each SEQ ID NO would be co-extensive and would not involve a serious burden on the Examiner. Applicants, therefore, request that the Examiner re-characterize the restriction requirement with respect to the SEQ ID NOs as a species election requirement.

It is the Applicants' understanding that under 35 U.S.C. §121, an election of a single species for prosecution on the merits is required, to which the claims will be restricted if no generic claim is finally held allowable. Applicants submit that claim 27 is generic. Applicants further understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141 *et seq.*

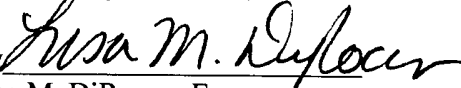
Application No.: 10/071,411
Amendment and Response dated September 2, 2003
Reply to Restriction Requirement dated July 1, 2003

Group Art Unit: 1637

Applicants believe no additional fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 12-0080, under Order No. MRI-021 from which the undersigned is authorized to draw. A duplicate of this sheet is enclosed.

Dated: September 2, 2003

Respectfully submitted,

By 

Lisa M. DiRocco, Esq.

Registration No.: 51,619

LAHIVE & COCKFIELD, LLP

28 State Street

Boston, Massachusetts 02109

(617) 227-7400

(617) 742-4214 (Fax)

Attorney for Applicants